

FILED

MAR 26 2015

Clerk, U.S. District Court
District Of Montana
Helena

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANDREW THOMAS SWAGER,

Defendant.

CR 09-12-H-CCL

ORDER

The Court referred the Petition for Revocation (Doc. 137) for hearing, findings of fact, and recommendation to Magistrate Judge Johnston by order filed on February 9, 2015 (Doc. 143).¹ Pending now before the Court is the Report of Findings & Recommendations ("F&R") filed by Magistrate Judge Johnston on February 18, 2015 (Doc. 147). There are no filed objections to the F&R.

¹ See 18 U.S. C. §3401(i).

I. Background

The following facts are taken from the F&R:

1. Andrew Thomas Swager violated Special Condition 3 of his supervised release by failing to appear for his sex offender treatment program on January 26, 2015.
2. Andrew Thomas Swager violated Standard Condition 3 of his supervised release by failing to follow the instructions of the probation officer.

(Doc. 147 at 6.) At the revocation hearing, Defendant Swager admitted that he violated Special Condition 3 and Standard Condition 3 as alleged by the petition.

(Doc. 147 at 4.)

The F&R recommends that this Court find the Defendant has violated two conditions of his supervised release and sentence Defendant Swager to a term of imprisonment of six months, with a lifetime term of supervised release to follow under the same conditions of supervision as previously imposed.

II. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1) this Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” The district judge must review the magistrate judge’s findings and recommendations de novo if objection is made. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). If an objection is made, the court reviews de novo only the portion to which the objection was made, the remainder is reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). No objection having been made, this Court reviews the F&R accordingly.

III. Discussion

This is Defendant’s second revocation proceeding. Defendant’s violation grade is C, his criminal history category is V, and his Chapter 7 Policy Guideline Range is 7 to 13 months imprisonment. Defendant is required to serve a term of

lifetime supervision. The government requested a custody sentence of seven months, and the Defendant requested a custody sentence of four months.

Magistrate Judge Johnston finds that sufficient mitigating circumstances exist to vary downward from the guidelines to a custody sentence of six months.

Defendant failed to attend his treatment program because he was in the hospital, and Defendant did not abscond. (Doc. 147 at 5.)

IV. Revocation Determination and Sentence

The Court therefore finds by a preponderance of the evidence that Defendant violated two conditions of his supervised release. *See* 18 U.S.C. § 3583(e)(3). Defendant's supervised release should be, and hereby is, revoked, and Defendant Swager should be resentenced.


The Magistrate Judge notified the parties that the U.S.S.G. Chapter 7 guideline range is 7-13 months incarceration, following by a lifetime term of supervised release. Neither counsel objected to these findings, and this Court agrees that the guideline range and supervised release findings made by the

Magistrate Judge are correct.

Having considered the recommended sentence, the arguments of counsel for the Defendant and the government, and the section 3553(a) statutory sentencing factors as made applicable by 18 U.S.C. § 3583(e), and all the record in this case, the Court finds that the appropriate sentence should be as recommended by Magistrate Judge Johnston: a custody term of six months imprisonment followed by a lifetime term of supervised release on the same conditions imposed previously by this Court. The Court adopts Magistrate Judge Johnston's Findings & Recommendations in full and shall enter Judgment accordingly.

The Clerk shall send a copy of this order to Magistrate Judge Johnston and the United States Probation Office.

Done and dated this 24th day of March, 2015.



CHARLES C. LOVELL
SENIOR UNITED STATES DISTRICT JUDGE